

ALEX STEWART

IBLA 81-551

Decided June 1, 1981

Appeal from the decision of the Nevada State Office, Bureau of Land Management, declaring the Second Chance mining claim abandoned and void. N MC-183217.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Recordation

Timely transmittal of the documents required by sec. 314 of the Federal Land Policy and Management Act of recordation of a mining claim to the California State Office when the claim is located in Nevada does not meet the requirements that the documents be filed timely in the proper office.

APPEARANCES: Alex Stewart, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Alex Stewart has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated March 10, 1981, declaring the

Second Chance lode mining claim, N MC-183217, abandoned and void for failure to file the notice of location for the claim in the proper BLM office on or before October 22, 1979.

The Second Chance mining claim was located by appellant and co-owner Frank Stamey on June 14, 1975, in that portion of sec. 11, T. 6 S., R. 38 E., Mount Diablo meridian, lying within Esmeralda County, Nevada.

On October 3, 1979, appellant filed a copy of the notice of location and 1979 proof of labor for the Second Chance claim and filings for three other claims at the California State Office, BLM. The California State Office mistakenly assigned the Second Chance claim a serial number, CA MC 39367, entered the claim in its records as being located in sec. 31, T. 9 S., R. 33 E., Mount Diablo meridian, Inyo County, California, and acknowledged receipt of the filings for all claims instead of rejecting the filings relating to the Second Chance claim because it was located in Nevada.

By letter dated September 17, 1980, the California State Office informed appellant that he should send his 1980 proof of labor to the Nevada State Office since the claim is located in Nevada. <sup>1/</sup> Appellant did so and the Nevada State Office returned it to him on October 1 indicating that he must supply the serial number assigned to the claim at the time of recordation and the names and addresses of the current owners. Appellant apparently then sent a copy of his notice of location for the claim to the Nevada office which received it on January 5, 1981.

In his statement of reasons, appellant argues that he has done everything that is required for recordation of his claim, albeit in the wrong office, and he feels that it is unfair to take the claim away when BLM does have the required records which could be transferred to the Nevada State Office. He indicates that he got his information on filing requirements from BLM's amended notice to mining claimants and encloses a copy.

[1] Section 314(b), Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a) reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before Oct. 21, 1976, on

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<sup>1/</sup> The case record is not clear as to whether this letter was sent to appellant in response to submission of his 1980 proof of labor for the claim or not.

Federal lands, \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

This regulation specifies that "file" shall mean being received and date stamped by the proper BLM office. The "proper BLM office" is defined in the regulations at 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states that the office having jurisdiction over lands located in Nevada is BLM's Nevada State Office in Reno. Appellant's notice of location and 1979 proof of labor had to have been received and date stamped by the Nevada State Office on or before October 22, 1979, in order to be filed timely. Interstate Brick, 50 IBLA 107 (1980); John S. Henson, 47 IBLA 129 (1980). We note that the amended notice to mining claimants submitted by appellant expressly deals with "mining claims \* \* \* on public lands of the United States in the State of California." Reliance upon a notice expressly limited to claims located in California when determining the office in which a claim located in Nevada should be recorded is not reasonable.

We recognize that arguably if the California State Office had promptly returned the filings for the Second Chance claim to appellant or forwarded them to the Nevada State Office, they may have been timely filed in that office, but that does not now change the result mandated by FLPMA. The need to conduct business at the land office having appropriate jurisdiction has long been recognized. Matthews v. Zane, 5 U.S. 244, 7 Wheat. 164 (1822); C. F. Linn, 45 IBLA 156, 158 (1980); see Gretchen Capital, Ltd., 37 IBLA 392, 394 (1978). The burden is on the claimant to file the required documents in the proper BLM office or bear the risk that it will not be returned or forwarded in time to meet the deadline. John S. Henson, *supra*; C. F. Linn, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Acting Administrative Judge

